

**Environmental Review Tribunal**  
Tribunal de l'environnement



**ISSUE DATE:** March 30, 2020

**CASE NO.:**

16-058

**PROCEEDING COMMENCED UNDER** section 140(1) of the *Environmental Protection Act*, R.S.O. 1990, c. E.19

Appellant:	Union Gas Limited (File No. 16-058)
Appellant:	Coca-Cola Refreshments Canada Company (File No. 16-059)
Appellant:	Rosart Properties Inc. (File No. 16-060)
Respondent:	Director, Ministry of the Environment, Conservation and Parks
Subject of appeal:	Order to undertake work with respect to contaminants
Reference No.:	4280-A8JQEX
Property Address/Description:	Site 1) 1565 Barton Street East Site 2) 1575 Barton Street East Site 3) 360 Strathearne Avenue North
Municipality:	City of Hamilton
ERT Case No.:	16-058
ERT Case Name:	Union Gas Limited v. Ontario (Environment, Conservation and Parks)

**APPEARANCES:**

**Parties**

Union Gas Limited

Coca-Cola Refreshments Canada Company

Rosart Properties Inc.

Director, Ministry of the Environment, Conservation and Parks

**Counsel**

Leonard Griffiths

Patrick G. Duffy

Peter Pickfield

Isabelle O'Connor and Justin Jacob

**Heard:** March 26, 2020 by telephone conference call  
**Adjudicator:** Helen Jackson, Member

## **PROCEDURAL ORDER**

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### **Background**

[1] On April 19, 2016, the Director, Ministry of the Environment, Conservation and Parks issued Order No. 4280-A8JQEX (“Director’s Order”) against AVX Corporation, Union Gas Limited, Coca-Cola Refreshments Canada Company and Rosart Properties Inc. (“Rosart”) pursuant to ss. 17, 18, and 196 of the *Environmental Protection Act* (“EPA”). The Director’s Order relates to the presence and migration of contaminants on three properties located in Hamilton, Ontario: (1) 1565 Barton Street East, (2) 1575 Barton Street East, and (3) 360 Strathearne Avenue North.

[2] Pursuant to s. 140(1) of the *EPA*, Union Gas Limited, Coca-Cola Refreshments Canada Company and Rosart (“Appellants”) filed Notices of Appeal with the Environmental Review Tribunal (“Tribunal”). AVX Corporation did not appeal the Director’s Order.

[3] On June 17, 2016, the Tribunal issued an Order staying portions of the Director’s Order, as against the Appellants, until December 31, 2016 (see: *Union Gas Limited v Ontario (Environment and Climate Change)*, 2016 CanLII 37491 (ON ERT)). In addition, the proceeding was adjourned on request of the parties until September 30, 2016.

[4] Since that time, numerous status update teleconference calls have been held, and the Tribunal has continued the stay. Today’s teleconference call was held for the parties to provide the Tribunal with an update of the work being undertaken to resolve the appeals without the need for a contested hearing.

[5] As in the case for the status updates prior to this call, the parties have been working together to prepare a conceptual site model (in relation to site conditions) and accompanying report that all parties agree upon and that is satisfactory to the Director. Peter Pickfield spoke on behalf of the Appellants and indicated that the second draft of the conceptual model and report is now being prepared on the basis of comments provided by the Director. The parties expect this second draft, with recommendations, will be shared amongst the parties whereupon the next steps in the matter can be evaluated.

[6] The parties jointly requested the Tribunal adjourn the matter to a further teleconference call in mid-June to provide the Tribunal with the proposed next steps, and that the Tribunal continue the stay of the portions of the Director's Order to 30 days following the next telephone conference call. The Director agreed to this approach.

### **Analysis and Findings**

[7] The Tribunal is satisfied that it is appropriate to adjourn the matter as requested and to continue the stay. In its previous orders, the Tribunal found that it was not precluded under s. 143(2) or 143(3) of the *EPA* from issuing a stay of s. 3.1.1, 3.1.2, 3.2.1, 3.2.2, 3.3.1 and 3.5.1 of the Director's Order as against the Appellants. Based on these findings, the Tribunal finds that it is not precluded under s. 143(2) or 143(3) of the *EPA* from granting a continuation of the stay of these items in the Director's Order.

[8] As was the case with the earlier orders, the requested continuation of the stay is on consent of all parties and has the effect of extending some of the deadlines in the Director's Order. The Tribunal finds that there is no need to engage in a detailed analysis of Rule 110 of the Tribunal's *Rules of Practice*.

[9] Subject to the same conditions set out in its earlier orders, the Tribunal grants the requested continuation of the stay, until 30 days following the next TCC.

**ORDER**

[10] The Tribunal orders that:

1. Sections 3.1.1, 3.1.2, 3.2.1, 3.2.2, 3.3.1 and 3.5.1 of the Director's Order are stayed as against the Appellants until July 16, 2020;
2. The Director or the Appellants may seek a removal or modification of this Order on 15 days' notice to the other parties and in accordance Rule 108 of the Tribunal's Rules; and
3. A status update teleconference call will be held on **June 16, 2020 at 10:10 a.m.**

*Request for Continuation of Stay Granted  
Procedural Directions Ordered*

*"Helen Jackson"*

HELEN JACKSON  
MEMBER

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**Environmental Review Tribunal**

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